

(3)  
No. 87-920

Supreme Court, U.S.  
**FILED**  
MAR 2 1988  
JOSEPH F. SPANIOLO, JR.  
~~CLERK~~

In The  
**Supreme Court of the United States**  
October Term, 1987

— 0 —  
NATALIE MEYER, in her official capacity as  
Colorado Secretary of State, and  
DUANE WOODARD, in his official capacity as  
Colorado Attorney General,

*Appellants,*

v.

PAUL K. GRANT, EDWARD HOSKINS, NANCY P. BIGBEE,  
LORI A. MASSIE, RALPH R. HARRISON,  
COLORADANS FOR FREE ENTERPRISE, INC.,  
a Colorado corporation,

*Appellees.*

— 0 —  
**ON APPEAL FROM THE UNITED STATES  
COURT OF APPEALS FOR THE TENTH CIRCUIT**

— 0 —  
**JOINT APPENDIX**  
— 0 —

DUANE WOODARD  
Attorney General  
CHARLES B. HOWE  
Deputy Attorney General  
RICHARD H. FORMAN  
Solicitor General

BILLY SHUMAN  
Counsel of Record  
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Attorney for Appellees

**APPEAL FILED NOVEMBER 23, 1987  
PROBABLE JURISDICTION NOTED  
JANUARY 19, 1988**

## TABLE OF CONTENTS

	Page
Relevant Docket Entries .....	1
Complaint .....	4
Answer to Complaint and Amended Complaint .....	8
Partial Transcript of Proceedings .....	10
Opinion of Tenth Circuit, <i>en banc</i> . .....	Jurisdiction Statement App. 1 - 37
Opinion of Tenth Circuit Panel And District Court .....	Jurisdiction Statement App. 41 - 79
Judgment .....	Jurisdiction Statement App. 80 - 81

## RELEVANT DOCKET ENTRIES

PAUL K. GRANT, *et al.* vs. NATALIE MEYER, *et al.*

### DATE NR. PROCEEDINGS

1984

- 6/12 X COMPLAINT—pd.
- X MOTION for Temporary Restraining Order and Preliminary Injunction . . . by pltf
- Plaintiffs' Brief in Support of Motions for Temporary Restraining Order and Preliminary Injunction
- 6/15 Petition to Intervene Embracing Statement of Claim or Defense by Donn McMorris
- HEARING on Motion for TRO and Prel Injune . . . Petition to intervene DENIED . . . motion for prel injune DENIED . . . trial on merits will be calendared as quickly as possible . . . eod 6/18/84
- X ORDER (JPM) . . . plf motion for TRO and Prel Injune DENIED . . . COM . . . eod 6/18/84
- MINUTE ORDER AND NOTICE OF TRIAL SETTING . . . (JPM) . . . 1 day trial to court set 8:30 6/27/84 . . . defs to answer at least 5 days prior to trial . . . COM . . . eod 6/18/84
- 6/20 MOTION for Leave to Amend Complaint . . . by Pltfs.
- MOTION to Participate as Amicus Curiae Pursuant to Rule 407 of LRCP . . . by Colorado Education Assoc. & Colo. Assoc. of Public Employees
- 6/21 MINUTE ORDER (JPM) . . . Pltfs. motion for leave to amend complaint (filed 6/20/84) is DENIED . . . com . . . eod 6/21/84

6/22 X ANSWER To Complaint & Amended Complaint . . . by Defts.

ORDER (JPM) . . . Ordered: Motion to Participate as Amicus Curiae Pursuant to Rule 407 of the Local Rules of Practice by Colo. Education Assoc. & Colo. Assoc. of Public Employees is DENIED . . . com . . . eod 6/25/84

6/25 Proposed Findings of Fact & Conclusions of Law . . . by Pltfs.

6/26 MOTION for Admission Pro Hac Vice of Paul H. Kumberger . . . by William C. Danks

Pltfs. List of Witnesses & Exhibits  
Memorandum of Law . . . by Pltfs.

6/27 TRIAL TO COURT—1st Day (JPM) . . .  
ORDERED: Motion for admission pro hac vice (filed 6/26/84 is GRANTED & Paul H. Kumberger may participate in this case . . . Pltfs. Exh. 1 is received by stipulation . . . witnesses . . . Pursuant to motion of pltfs. Court takes judicial notice of Colorado Statutes CRS 1-40-110, CRS 1-13-106 & CRS 1-40-119 . . . ORDERED: Witness received as expert in initiative process . . . Pltfs. motion to strike testimony of this witness . . . Motion DENIED . . . Pursuant to request by defts. Court takes judicial notice of CRS 1-40-11 . . . Closing arguments . . . ORDERED: Case is taken under advisement . . . eod 6/27/84

Witness List . . . by Defts.

7/ 3 X ORDER (JPM) . . . Judgment enter in favor of defts. & against pltfs. Defts. shall be awarded costs upon filing of a proper bill of costs within 10 days of entry of judgment . . . com . . . eod 7/5/84

7/ 5 X JUDGMENT (SPE) . . . ORDERED: Judgment is entered in favor of defts. Natalie Meyer & Duane Woodard, & against pltfs., Paul K. Grant, Edward Hoskins, Nancy P. Bigbee, Lori A. Massie, Ralph R. Harrison & Coloradans for Free Enterprises, Inc. . . . defts. shall have their costs upon filing of a bill of costs within 10 days of entry of judgment . . . action is DISMISSED . . . com . . . eod 7/5/84

7/ 6 X NOTICE OF APPEAL, filed by Plaintiffs in re: Order of July 5, 1984 . . . com. by PHONE Transcript. Designation Conference set for Monday, July 16, 1984 at 9:00 a.m. Order due July 16, 1984. \$65.00 fee paid and \$5.00 fee paid.

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No.

—o—

PAUL K. GRANT, EDWARD HOSKINS, NANCY P. BIGBEE, LORI A. MASSIE, RALPH R. HARRISON, COLORADANS FOR FREE ENTERPRISE, INC., a Colorado corporation,

Plaintiffs,

vs.

NATALIE MEYER, in her official capacity as Colorado Secretary of State, and DUANE WOODARD, in his official capacity as Colorado Attorney General,

Defendants.

—o—  
COMPLAINT  
—o—

The Plaintiffs, for their Complaint, allege:

1. The Court has jurisdiction of this case because of a federal question. 28 U.S.C. § 1331, 42 U.S.C. § 1983, U.S. Constitution, First and Fourteenth Amendments.

2. The individual Plaintiffs are each registered voters in the State of Colorado. In addition, Paul Grant and Edward Hoskins are the designated representatives of a Petition to initiate a proposed Amendment to the Constitution of the State of Colorado to be submitted to the voters for their adoption or rejection at the polls at the next general election to be held on Tuesday, November 6, 1984.

3. The Plaintiff, Coloradans For Free Enterprise, Inc (CFE), is a corporation organized under the laws of

the State of Colorado. CFE supports the proposed constitutional amendment.

4. The proposed initiated Amendment to the Constitution of the State of Colorado is as follows:

“Be It Enacted by the People of the State of Colorado: Article XXV of the Constitution of the State of Colorado is amended by the addition of a sentence to the end of the first paragraph to read:

“ ‘Effective January 1, 1985, no person, corporation, or other legally recognized business entity engaged in the transportation of persons or property for compensation, shall be defined as public utilities, nor shall they be regulated as such.’ ”

5. The Defendant, Natalie Meyer, is sued in her official capacity as Secretary of the State of Colorado and the Defendant, Duane Woodard, is sued in his official capacity as the Attorney General of the State of Colorado.

6. In order for this initiative to be placed on the ballot, a Petition must be signed by at least 46,737 valid signatures of registered voters before August 6, 1984. In obtaining the signatures, the circulator of the Petition explains and discusses the proposed amendment with the person being asked to sign the Petition.

7. In order to ensure that sufficient signatures are obtained on the Petition by August 6, 1984, the Plaintiffs desire to pay persons for their time and labor in circulating the Petitions. Furthermore, some or all of the Plaintiffs desire to be paid for their time and labor in circulating the Petitions. However, the laws of the State of Colorado, C.R.S., 1-40-110, make it a criminal offense for any person or corporation to pay to or receive money for circulating petitions.

8. The statute of the State of Colorado violates the First Amendment rights of the Plaintiffs to free speech and association. It is therefore unconstitutional and invalid.

9. The Plaintiffs will be irreparably damaged unless the Court immediately declares the statute unconstitutional in that the Plaintiffs are desirous of immediately having paid circulators. The Plaintiffs are in jeopardy of being arrested for violating the statute and every day in which they delay paying circulators jeopardizes the chances of obtaining the necessary signatures by August 6, 1984.

WHEREFORE, the Plaintiffs pray for an injunction enjoining the State of Colorado from enforcing C.R.S., 1-40-110, and for a declaration that C.R.S., 1-40-110 is unconstitutional, for attorney's fees pursuant to 42 U.S.C. § 1988, costs and other appropriate relief.

Respectfully submitted

/s/ WILLIAM C. DANKS, No. 4758  
Attorney for Plaintiffs  
620 Steele Park Building  
50 South Steele Street  
Denver, Colorado 80209  
393-0433

#### VERIFICATION

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

I, Paul K. Grant, one of the above-named plaintiffs, after being duly sworn, state that upon my personal knowl-

edge, the allegations of fact in this Complaint are true.

/s/ Paul K. Grant

Subscribed and sworn to before me this 12th day of June 1984.

WITNESS my hand and official seal.

/s/ Carol A. Norman  
Notary Public

My Commission Expires March 2, 1986  
50 So. Steele St., Suite 620  
Denver, Colorado 80209

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

No. 84-JM-1207

PAUL K. GRANT, EDWARD HOSKINS, NANCY P.  
BIGBEE, LORI A. MASSIE, RALPH R. HARRISON,  
COLORADANS FOR FREE ENTERPRISE, INC., a  
Colorado corporation,

Plaintiffs,

vs.

NATALIE MEYER, in her official capacity as Colorado  
Secretary of State and

DUANE WOODARD, in his official capacity as Colorado  
Attorney General,

Defendants.

ANSWER TO COMPLAINT AND  
AMENDED COMPLAINT

(Filed June 22, 1984)

COME NOW Defendants Secretary of State Natalie  
Meyer and Colorado Attorney General Duane Woodard,  
by and through the Office of the Attorney General, and  
hereby respond to the complaint as follows:

1. Defendants admit the allegations in paragraphs  
2, 3, 4, 5 and 6 of the complaint.

2. Defendants deny all of the allegations in para-  
graphs 1, 8 and 9 of the complaint.

3. With respect to paragraph 7 of the complaint,  
defendants admit that C.R.S. 1-40-110 (1980) makes it a  
criminal offense to pay or receive money for circulating  
any initiative or referendum petition, but are without suf-  
ficient knowledge or information to form a belief as to the  
truth or accuracy of the remaining allegations, and there-  
fore deny same.

4. With respect to the amendment to paragraph 7 of  
the complaint, defendants deny that the language of C.R.S.  
1-40-106 (1980) violates the First and Fourteenth Amend-  
ments to the U.S. Constitution.

WHEREFORE, defendants pray that plaintiffs take  
nothing by their complaint, that the complaint be dis-  
missed, that defendants be awarded their costs of this ac-  
tion, and such further relief as the court deems just and  
appropriate.

DATED this 22nd day of June, 1984.

FOR THE ATTORNEY GENERAL  
Cheryl J. Hanson, #12014, for  
Ruthanne Gartland

RUTHANNE GARTLAND, #2283  
First Asst. Attorney General  
General Legal Services Section  
Attorneys for Defendants  
1525 Sherman Street, 3d Floor  
Denver, Colorado 80203  
Telephone: 866-3611

CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing  
ANSWER TO COMPLAINT AND AMENDED COM-  
PLAINT upon all parties herein by placing a true and  
correct copy of same in the United States mail, postage  
prepaid, at Denver, Colorado, on this 22d day of June,  
1984, addressed as follows:

William C. Danks, Esq.  
50 South Steele Street, Suite 620  
Denver, Colorado 80209

/s/ Deborah Shuchter

(p. 1) IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 84-JM-1207

PAUL K. GRANT, EDWARD )  
HOSKINS, NANCY P. BIGBEE, )  
LORI A. MASSIE, RALPH R. )  
HARRISON, COLORADANS FOR )  
FREE ENTERPRISE, INC., a )  
Colorado corporation, )

Plaintiffs, )

vs. )

NATALIE MEYER, in her official )  
capacity as Colorado Secretary of )  
State, and DUANE WOODWARD, )  
in his official capacity as Colorado )  
Attorney General, )

Defendants. )

OFFICIAL TRANSCRIPT

Trial

Proceedings before the HONORABLE JOHN P. MOORE, Judge, United States District Court for the District of Colorado, beginning at 8:40 a.m. on the 27th day of June, 1984, in Courtroom C-502, United States Courthouse, Denver, Colorado.

APPEARANCES:

WILLIAM C. DANKS, Attorney at Law, Denver, Colorado, and PAUL H. KUMBERGER, Attorney at Law, Oregon, appearing for Plaintiffs.

(p. 2) APPEARANCES: (Continued)

RUTHANNE GARTLAND, First Assistant Attorney General, Denver, Colorado, appearing for Defendants.

\* \* \*

(p. 5) Ms. Gartland: I do not, Your Honor, not at this time.

The Court: All right, you may call your first witness.

Mr. Danks: Mr. Paul Grant.

PAUL GRANT

called as a witness by the plaintiff, being first duly sworn, on his oath testified as follows:

The Clerk: Please state your name and address for the record.

The Witness: My name is Paul Grant and my address is 6541 Kilimanjaro, in Evergreen, Colorado.

DIRECT EXAMINATION

By Mr. Danks:

Q Mr. Grant, you are one of the plaintiffs engaged in this lawsuit, is that correct?

A Yes, I am.

Q In brief format, give us your background. Where did you go to college? What is your educational background and what is your occupation?

A I have two degrees in chemical engineering, a Bachelor's and a Master's, the Master's from the University of Maryland. Three years experience in the United States Army. My profession is working as a sales engin-



eer. I sell process equipment to chemical and mine companies. I have been in sales for the last eight years.

I have also been active in political activities. I am (p. 6) the National Chairman of the Libertarian Party at this time, as well as Chairman of the Coloradans for Free Enterprise, one of plaintiffs in this case.

Q What is Coloradans for Free Enterprise?

A Coloradans for Free Enterprise is a non-partisan group founded in 1982 as a for-profit corporation, and its purpose was to promote free market solutions to problems here in the State of Colorado.

Q Is Coloradans for Free Enterprise incorporated under the State of Colorado?

A It is, and as far as I know it is up to date with all its filings.

Q Are you an officer or director?

A I am a director. I am Chairman of the Board of that organization.

Q Is Coloradans for Free Enterprise sponsoring a proposed initiative?

A Yes.

Q Would you describe that initiative?

A The initiative is briefly to deregulate Colorado's transportation industry, and the method is by constitutional amendment to prohibit the finding of transportation companies as public utilities, therefore getting them out from under the Public Utilities Commission of Colorado, which is now charged with their regulation.

(p. 7) Q You mentioned by background and profession you are a chemical engineer. Does that professional background relate specifically to this proposal?

A Not in any way.

Q I would like to hand you what has been marked for identification as Plaintiffs' Exhibit 1.

The Court: The clerk will do that, Mr. Danks. She will have all the exhibits, just ask her.

Mr. Danks: There is only one, Your Honor.

Q I ask you if you can identify that exhibit?

A I recognize it as our petition.

Q Is that a true and accurate copy of the original petition?

A I would say that it is, except that the red ink came out in black.

Mr. Danks: All right, at this time, Your Honor, I believe it has already been stipulated.

The Court: It is received in evidence.

(Plaintiffs' Exhibit 1 received in evidence.)

Q Would you describe just generally and rather briefly the process that you went by in order to get this petition in the position that it is in now?

A Well, the first time we did it, before drafting the initiative, was look for a group of people to support it, broad-based group of citizens, and we wanted their input in the drafting, so we had something which was acceptable to a large group of people.

(p. 8) We had involved in that process transportation attorneys, members of the transportation industry, members of Coloradans for Free Enterprise, and members of the Colorado Legislature.

After going through several rounds and versions of drafts of potential language, we settled on the language which is included in this petition. We had to submit that to the Secretary of State's office for setting on the ballot summary, which we did. That was approved. There was no challenge to that language.

We went out and printed our petitions after that.

Q You hoped to have it on the ballot in November of 1984?

A We hope very much to do that.

Q And in order to do that, you have to obtain a certain number of signatures?

A Yes, the number is something on the order of 46,700 signatures, which requires an additional cushion of 10 to 15 or probably 20,000, to make sure you have enough valid signatures or registered voters.

Q By what date do you need those signatures?

A August 6, 1984.

Q You mentioned there was a broad base of supporters for this. Would you identify by name and political parties some of the principals.

A Well, the primary supporters of this initiative who are listed on our letterhead as endorsers, I will go through as best (p. 9) I can from memory. Nancy Bigbee, a trans-

portation attorney. State Representative Frank D. Philipo, a Republican from Jefferson County. State Senator Barbara Holme, a Democrat from Denver. State Senator Don McManus, Democrat from Adams County. State Representative Ruth Pendergast, Republican. State Representative Pete Menham from Colorado Springs. Bill Womack, a member of the RTD board. Bili Rourke, the Colorado Chapter of National Association of Independent Businesses. Patrick Lilly, Chairman of the Colorado Libertarian Party. Spencer Soame, head of Coloradans for Alternative Transit, and a few others on that letterhead whose names I don't recall.

Q In obtaining the petitions, could you describe what you have personally done. Have you actually gone out and asked people to sign a petition?

A In this case?

Q In this particular case.

A Yes, I have collected over 400 petition signatures as of today.

Q Would you describe your experience?

A In going out and soliciting signatures?

Q Yes, on this particular proposal, if you can relate as to what explanation—what did you explain to the petition signer?

A On May 19th and May 20th of this year, I petitioned at the Capitol Hill People's Fair, held in Denver every year. On May 19th, I petitioned and got approximately 160 signatures, and one (p. 10) of the interesting things about petitioning on that day was that it was my birthday, but the way that we go about soliciting signatures

is that you ask the person—first of all, you interrupt the person in their walk or whatever they are doing. You intrude upon them and ask them, “Are you a registered voter?”

Many people say, “I haven’t got time, don’t bother me,” or “Yes, I am, but it is none of your business,” or “Yes, I am, so what?”

If you get a yes, then you tell the person your purpose, that you are circulating a petition to qualify the issue on the ballot in November, and tell them what about, and they say, “Please let me know a little bit more.” Typically, that takes maybe a minute or two, the process of explaining to the persons that you are trying to put the initiative on the ballot to exempt Colorado transportation from PUC regulations.

Then you ask the person if they will sign your petition. If they hesitate, you try to come up with additional arguments to get them to sign. If they say yes, you get them to sign. If they don’t, you say, “Thanks, have a nice day.”

If they are—I say I referenced May 19th as my birthday. I was extra successful that day by saying, “Please sign, today is my birthday,” and most people said, “Well, if I had said that right away, I would have signed right away. You wouldn’t have had to go through most of this.”

Q In a more serious vein, what have you tried to explain?

A Tried to explain the not just deregulation in this industry, that it would free up the industry from being cartelized, allowing freedom from moral choices, price

competition for the first time, lowering price costs, which we estimate prices in Colorado to be \$150 million a year in monopoly benefits. We have tried to convey the unfairness and injustice of the existing system, where some businesses are denied to go into business simply to protect the profits of existing companies.

We tried to convey the unfairness of the existing system, which has denied individuals the right to start their own businesses. In many cases, individuals have asked for an authority and been turned down because huge corporate organizations have opposed them.

So, the liberals—if we can spot a liberal, sometimes we can, we made the argument we are trying to break up the monopolies, trying to help the small businessman, and the minorities are being hurt the most, truckers of minorities.

To conservatives, we tried to point out this is a free enterprise issue. This is an issue of free market, and getting the government out of a business it has no business being in. We have also used the argument, which is also very compelling to many people, that this is simply—“We are simply asking for your signature to place this issue on the ballot, where the voters in November can decide yes or no, whether it is a good idea.” And in favor of that is part of the democratic process.

(p. 12) And we, in conjunction, mention the fact that there have been repeated efforts to do similar work with deregulation through the Colorado Legislature, but those bills have been bottled up in committees, and heavy lobbying pressure, and lots of dollars have been spent in keeping those bills from reaching the floor.



So we have a whole raft, whole array of arguments. We have specific cases of people who have been hurt and denied the right to go into business, or put out of business by the competitors, in addition to what you might refer to as the frivolous arguments, which sometimes help to help a person make up their minds and put pen to paper.

Q What percentage of the people you have approached, in your estimation, have actually signed the petition?

A Well, in my experience, I would say that perhaps 70 percent, and that's probably being generous, maybe 60 to 70, people you approach say they are registered voters in the State of Colorado, and of those that say they are, some don't have the time to talk to you. Maybe 80 percent will take the time to listen. Of those who actually do listen and are registered voters and eligible, probably 65 to 70 percent of those people are persuaded to sign the petition and do so. It is not a very difficult process, once you find a person who will listen to you and is qualified to sign.

Q Has the required 46,000 plus signatures been obtained as of (p. 13) today's date?

A No, it has not. To my information, we don't even have that many petitions out right now.

Q Can you give us a rough estimate on how many signatures you have at this point?

A I would say we have between 10 and 15,000 collected signatures at this time, and we have over 30,000 signature lines in the hands of petition circulators at this time. We don't know how many of those are filled in and how many are not.

Q Have you paid anyone to sign the petition?

A No, I have not.

Q Do you desire to have anyone be paid for actually signing their name to a petition?

A No, I don't—I do not.

Q However, you do desire to pay the petition circulators?

A Yes.

Q Is that correct?

A Yes.

Q Do you personally desire to be paid for your time in circulating petitions?

A Not really. I would like to be able to pay them so that I have time to go back to my work.

Q If you were paid, would you devote more time to it?

A If I were paid, I could afford to devote more time to it, and I would do it.

(p. 14) Q Well, if you were—

A I would accept it on a paid basis, if that was the only way I could be out there, and that was necessary to get it qualified.

Q All right, now, we are in court asking the Court to allow you to pay petition circulators. If this Court should grant our relief, what effect would that have on your petition drive?



A I think it would allow us to qualify our petition drive for the November ballot, if we were allowed to pay petitioners.

Ms. Gartland: I would object on the ground that the answer is speculative, Your Honor.

The Court: Overruled.

A (Continued) I—I specifically think that it would allow us to get enough people out circulating petitions to where we could easily manage within the remaining six weeks to collect the necessary signatures. It would allow us to offer the incentive for people to go out there and put out the greater than 50 percent rejection percent, because even with 80 or 70 percent being registered, 80 percent talking and 70 percent you approached actually signing, that's only about 40 percent actually do. It's a very negative thing. I think it would help overcome that.

Q Have you personally been involved in recruiting circulating petitioners?

A Yes.

Q What do they say?

A People who have before say, "I hate petitioning." People (p. 15) who haven't say, "I don't think I can do it. What is it?"

What you are asking people to do is go out and intrude on strangers and intrude on their privacy and beg them for something which you have perhaps good reasons to ask them to do. Most people I attempt to recruit don't — say they don't have confidence in their ability to articulate the issue or to confront people directly, so we

find it a very difficult thing, and I would say of the people we solicit to get involved with the petition, maybe 10 to 20 percent do contribute some time, and maybe 10 percent of those contribute large numbers of hours.

Q Have you been involved in other petition drives, other than this one before us today?

A Yes, I have.

Q Would you describe your broader experience?

A I have been involved in excess of 100 petition drives in the last eight years, throughout the United States. My first petition drive was in 1976, where I was volunteer circulator in New York, on the McBride for President, Libertarian issue, and since that time have been involved in other Libertarian Party petition drives, as well as three times in Colorado I have run for public office. Each time I have had to circulate petitions to get myself qualified for the ballot.

In 1980, the Libertarian Party ran about 33 petition drives. I was on the national committee which was managing the affairs of the party and running those drives.

(p. 16) In 1982, the party ran probably 20 petition drives around the country. I was the chairman of the Ballot Drive Committee.

In 1984, I am the National Chairman of the Libertarian Party, and we are running 33 petition drives across the country to get our presidential candidate qualified.

In addition to that, I have worked on other candidate petition drives as a circulator, and other initiative petition drives as a circulator.

Q In working in other states, have you been involved in petition drives for which petition circulators were allowed to be paid?

A Yes, I have.

Q Would you relate that experience, specifically in terms of the effect on the petition drive of having paid circulators?

A My primary experience with paid circulators is in 1980, '82 and '84, in qualifying Libertarian candidates for the ballot. The Libertarian Party pays for ballot drives in roughly 25 states in the United States, and I know of no state which prohibits us from doing that to qualify our candidates where we are doing it.

In a few of the other states where we do petition drives, we do it by volunteers. In the states where we pay the petition circulators—I will name a few, Texas, Pennsylvania, Florida, Georgia, Oregon, California, in the past, although now (p. 17) we are permanently qualified, and those states where we have to pay, we pay as many people as we need to supplement the local volunteer force.

We have in 1980 achieved ballot status in all 50 states. I would say we spent roughly \$300,000 qualifying our presidential candidate through paying petition circulators in 1980, and this year the Libertarian Party has budgeted in the presidential campaign \$200,000 for ballot drive assistance, the primary purpose to pay petition circulators.

Q You may have mentioned the states, but generally how many states allow petition circulators to be paid and how many require them to be volunteers?

A To my knowledge, we have run into no state which is prohibiting us from paying petition circulators today. Oregon did in the past, and we challenged the constitutionality of that act, and we can now pay petitioners in Oregon, but to my knowledge there are no other states which are restricting our ability to pay petition circulators on behalf of our candidates.

Q None other than Colorado that you know of?

A Well, none other than Colorado. We haven't—we don't normally have to consider that as an additional barrier to getting a ballot qualified. Usually our primary burden is the deadline, the quantity of signatures required and the time frame in which they are available, matched against the local volunteer force and the local financial resources.

(p. 18) Q In more or less being in charge of petition drive, or specifically this petition drive, how do you go about maintaining the integrity of the signatures you obtain?

A Well, anybody that has been involved in petition drives, has a lot of experience in them, knows that frequently and most typically if you have, for instance, a petition circulator forging signatures, it is self-evident.

You look at the piece of paper and notice similar handwritings. Even if they do that with five people sitting around a room, you notice the similarity. We have caught circulators copying phone books, caught them writing in groups of five, caught them putting signatures onto the petitions, and we simply know that it is in our best interest to catch these things before we submit them, because it

does us no good to submit invalid or fraudulent signatures, and may wind us up in serious problems.

We have had petition drives that have had problems, some unpaid and some paid, and in 1980—no, 1976, in Florida, we discovered a situation like this that cost us ballot status. We never submitted the petition because we discovered at the last minute some of our signatures were not in proper order.

Is that just in regard to pay drives, or volunteer?

Q I would like you to discuss volunteer as well.

A I assisted as a volunteer in collecting petition signatures in 1982 on an initiative in Colorado, which was later disqualified (p. 19) because of improper circulation procedures, and that was a casino gambling initiative, where I got a few signatures to help out in the response to that, and that petition was eventually disqualified, and the circulator, despite our best attempts to advise on proper procedures, wound up in court.

Q What motivates people to carry around a petition and ask for signatures on it?

A Well, in the Libertarian Party, the primary purpose for doing the petition drive is to get our candidate on the ballot, in order to espouse our views. In initiatives, it is sometimes simply that people want to put an issue in front of the people, to bring it to public awareness, and debate that it is a problem. Sometimes they want to change the law, and in my experience, most of the drives I've been associated with, the primary motivation is that people believe in the justice and rightness and morality

of the cause they are supporting. They have very strong personal motivations.

Now, when you hire petition circulators, sometimes you hire motivated circulators, and sometimes those who aren't as motivated.

Q Can money be a motivating factor?

A Money is very definitely a motivating factor to get someone to work on behalf of an effort, a matter of raising the demand and you get more supply. You pay people. You pay them more. You get more people able and willing to do it. Many of the (p. 20) people that I work with in the Coloradans for Free Enterprise, most of them—well, the majority of the people I work with in the Libertarian Party are people who have jobs, and they either have jobs or don't have jobs. If they do have jobs, they can't afford to take time off to work on the drive. If they don't have jobs, and they are looking for them, they can't afford to be volunteers. So money either enables people to forego leaving a job, or enables them to have a job.

Q And is there indirect financial interest? In other words, do you have trucking companies—

A Yes, we have limousine companies, trucking companies, potential cab companies, potential business people, people not in the business who are supporters and working on this, and they are working on it because they think it will give them an opportunity to either start their business or in some cases to expand their existing businesses, so they definitely have an economic interest in the outcome of this measure, and they are supporting us.



Q Were you in Colorado during the branch banking or the wine in the grocery store initiatives?

A Yes, I was.

Q Would you contribute, based on your experience or your observations, the motivations of those petition circulators, on their connections, say, with the banking industry and grocery store business?

(p. 21) Ms. Gartland: I would object, Your Honor. He is asking the witness really to read the minds of people.

The Court: Sustained on foundation.

Q Did you observe petition circulators in connection with the wine in the grocery store initiative?

A Yes, I did.

Q And where did you observe petition circulators?

A In King Soopers and Safeway grocery stores.

Q Who was actually doing the petition circulating?

A I asked some of these people, and they were typically employees on their day off, employees of the grocery stores, where the petition tables were set up within the grocery stores.

Mr. Danks: May we have just a moment, Your Honor?

The Court: You may.

Mr. Danks: That concludes my direct examination, Your Honor.

The Court: All right.

## CROSS-EXAMINATION

By Ms. Gartland:

Q Mr. Grant, approximately what time was the organization which is sponsoring this particular petition drive formed?

A Coloradans for Free Enterprise was formed as a corporation, was formed in 1982. Now, we have formed a political committee, and I don't recall the exact date, which is the official sponsor of this initiative, and files its reports, Coloradans for Free (p. 22) Enterprise and Transportation. I don't know that—that's within the last year.

Q You said the first thing you did in the course of your petition drive was to look for a group of people to support the issue. Do you remember approximately when you began those efforts?

A I would say in—we began them in an active public way in June of 1983, with our first public meeting, with State Senator Don McManus addressing Coloradans for Free Enterprise, members of the press and members of the public and members of the transportation industry, at an event here in Denver.

Q When did you submit your petitions in the Secretary of State's office for ballot title designation?

A Probably sometime around January, but I can't recall.

Q When did you request a hearing before the Secretary of State to have your title designated?

A That's when you submit—that is a request for a hearing.



Q At the time it was submitted.

A Yes. Well, first, you go to the Legislative Drafting Office to get their comments. We did that in December.

Q And you believe you have filed your petition with the Secretary of State's office in January of this year?

A Perhaps late January, perhaps February, early February. I'm not certain.

Q Are you aware that—that the—there is no initial time (p. 23) period within which you have to submit your petition to the Secretary of State's office?

A Yes, I am aware.

Q It could have been submitted in January of '83, for that matter?

A That's correct.

Q Now, are you aware that your six months from—for getting the sufficient number of signatures begins to run from the date that the Ballot Title Board fixes the title?

A Yes, I am.

Q And when did the Ballot Title Board fix the title, in your case?

A I don't know the date. I think it was in March.

Q Does the date March 14th sound correct?

A Sounds approximately right.

Q So you had a total of four and three-fourths months in which to get sufficient signatures?

A In which to collect signatures, yes.

Q So you haven't utilized the full six months that the statute allows you to collect signatures, would that be correct?

A No, that's wrong.

Q You have utilized the full six months?

A Yes, we have. Well, no, I'm sorry. I thought you said since the time we started.

Q No, from, as I understand it, or as we agree, under Colorado (p. 24) law, the six months for getting signatures begins to run from the time the Ballot Title Board fixes the title?

A Yes.

Q You actually were approved for circulation on March 14th?

A Yes, that's when we began.

Q So you have not utilized the full six months available under Colorado law?

A It wasn't available to us this year.

Q It would have been available, if you had—

A Yes.

Q —gotten an earlier date from the Secretary of State's office?

A Yes.

Q Has anyone within your organization, Mr. Grant, been given responsibility to recruit volunteers to circulate the petition?

A It is a specific responsibility of Lori Massie, the Executive Director of Coloradans for Free Enterprise. It is my responsibility. It is the officers of our organization's responsibility, and it is the responsibility of every person who would like to see our initiative on the ballot who is associated with our efforts.

Q Is Lorie Massie a paid employee of the organization?

A She is a commissioned fund raiser for the organization.

Q So is she paid for her efforts?

A She is paid on the basis of her success at fund raising.

(p. 25) Q Is she compensated for her time in attempting to recruit volunteers?

A No, she is not.

Q Is it your understanding that Colorado law would allow her to be compensated for her time in recruiting volunteers?

A Yes.

Q Are you paid for your efforts in recruiting volunteers?

A No, I'm not.

Q And do you agree that Colorado law would allow you to be paid for such efforts?

A Yes, I do.

Q With regard to your personal experience in recruiting volunteers, what kind of people have you talked to?

A I have talked to—Republican legislators. I have talked to Democrat legislators. I have talked to members of the transportation industry, either providers of transportation services or users of transportation services, as the companies that ship goods and services. I have talked to Libertarians. I have talked to people on the street when I circulate petitions—sometimes you find a person. I have talked to people who have been turned down for PUC licenses, because they know about the benefits of deregulation. I have even talked to a Yellow Cab driver.

Q And you have run into a problem on these individuals not feeling confident about confronting the public and explaining the (p. 26) merits of the issues?

A Not feeling that they—not feeling confident in their own ability to handle that direct a contact, with the—added—it's not just a contact, but it is a persuasive contact with a stranger, yes.

Q With regard to your experiences in other states using paid circulators, what were the circulators on the average paid? What amount of money?

A That varies, according to the exigencies of the situation. Very late in the ballot drive, it is very urgent, the pay goes up. Anywhere from 25 cents a signature to \$1 a signature, in some cases. In other cases, they are simply paid by the hour, probably up to \$10 an hour, for their efforts very late in the petition drive, when the demand is high and the supply is limited.

Q Okay, have you personally retained or hired individuals in other states to circulate petitions?

A Not directly. I authorize it. I do not hire them.

Q Who has done the hiring?

A Our local petition managers, petition drive manager.

Q And are you aware of what the hiring process is to get these individuals?

A Yes, I am.

Q What is that process?

A First, usually starts with contacting local—all the local (p. 27) Libertarians, by phone or by mail, if it is a Libertarian Party, or if it is an initiative drive, working with some other base group.

We normally contact the party list first, if it is a party drive, not paid, and if they won't volunteer, we talk about paying them, and see what we have got. We take our requirements versus our volunteer effort, and then we go out and try to hire the balance, and simultaneously raise the money to pay for it.

We then probably normally would start putting ads up on bulletin boards, on college campuses, running ads in local newspapers. I don't think we have ever bought any media, broadcast media time, to advertise that. Might put up a—put a small ad in the Shopper's Guide, or something like that, try to advertise to find people who are interested in working as paid circulators.

Q Generally, these people who are not associated with the organization, like college students, how much they paid for their time?

A The same as anyone else, and I have already mentioned that. The rates are on production, not on affiliations.

Q You have referred to some problems you have had with forgeries. You mentioned briefly an incident where you caught circulators writing in groups of five. Would you explain more specifically what happened there?

(p. 28) A That's simply where a group of people sit around in a room, five of them. A petitioner circulator will perhaps get together with four friends, sit down in a room, and they will write in different handwritings consecutive names. They will pick them from some source. Might have a phone book. Or a registered voter list.

Q Where did that occur?

A Occurred in several states. In Florida, in Texas, to my direct knowledge. It occurred in several other states, as far as I've been told, but I wasn't personally aware of.

Q You mentioned an incident where circulators were caught going through phone books. Would you explain that incident a little further?

A Petition circulators, found it very difficult to solicit people on the street. They found it easier to solicit the phone book for potential supporters, and they just assumed, I guess, that the people in the phone book were voluntarily signing, and just simply copied them out of the phone book, and it is easy to spot.

Q Where did that occur?

A That occurred in Florida, in 1976.

Q Of—

A It occurred—never mind, excuse me.

Q Who were the individuals involved in that incident?

A By name?

(p. 29) Q No, by—were they associated with the Libertarian Party?

A Yes.

Q Were they paid?

A Some were and some were not. We had both involved in the incident.

Q They were working together as a group?

A I think we had separate incidents that were not coordinated in that time in 1976.

Ms. Gartland: I have no further questions of this witness.

The Court: Very well. Mr. Danks?

Mr. Danks: No questions, Your Honor.

The Court: Thank you, Mr. Grant. You may step down.

Mr. Danks: Your Honor, at this time I move the Court to take judicial notice of three Colorado statutes. Those are CRS 1-40-110, CRS 1-13-106, and CRS—

The Court: Wait a minute.

Mr. Danks: 106.

The Court: All right.

Mr. Danks: And 1-40-119.

The Court: Any objections?

Ms. Gartland: No objection.

The Court: Notice will be taken.

Mr. Danks: The purpose of the judicial notice is that each of those statutes makes it a specific criminal offense to (p. 30) either forge, misrepresent or to pay someone to sign a petition.

The Court: Very well.

Dr. Danks: At this time, I would like to call Lori Massie.

### LORI MASSIE

called as a witness by the plaintiffs, being first duly sworn, on her oath testified as follows:

The Clerk: Please state your name and address for the record.

The Witness: My name is Lorie Massie. I live at 6541 Kilimanjaro in Evergreen.

### DIRECT EXAMINATION

By Mr. Danks:

Q Would you relate your background, just briefly, in terms of your education and work experience?



A Okay. I went to college in Florida, the University of South Florida. I have a B.A. in fine arts. Then I went to work in a manufacturing firm, for which I did the marketing.

Q. What background do you have in marketing or in sales-type work?

A Well, it goes back a long way. One of the first things that I ever did was sell sewing machines, so I have a sales background in that. Then I started my own plant business, where I would sell plants door to door, and then I went to work for a company who had sales in both the United States and overseas, and I (p. 31) handled everything from the advertising to marketing for them.

Q Let me jump straight into the petition drive. How does your sales background relate, if it does, to the act of obtaining signatures on petitions?

A Well, one of the things about sales is very often you have to approach someone cold, like a cold call. You go up to someone who is not familiar with you, doesn't know you, is not really interested in what you have to say, so my experience in the sales end of it has allowed me to know what kind of responses you can get and what kind of rejection rate you do get from that.

Q Now, how is the circulation of a petition like selling something?

A Well, when you go up to someone, whether it is to sell or to ask them for something, you are invading the space that people generally feel is a correct distance to stay from one another. Individuals in the United States don't very often like to be approached by people. They are

solicited for all kinds of things, through the mail, on the phone, everywhere, so to a certain extent, in my experience, they are wary of someone coming up to them and asking them for something, or to their doorbell, or to them on the street, or by phone. So the same thing is true, whether you are going to ask them to buy something or whether you are going to ask them for their signature.

Q What is a blind sales call?

(p. 32) A A blind sales call is when you go up to someone who has no previous knowledge of you or your company, or your product or what it is that you are trying to sell. It is called a cold call, and as opposed to a lead, where they have some sort of previous dealings with your company.

Q Which type of sale is easier, a lead, when it is—

A Oh, leads are definitely much easier to do.

Q And would you describe a petition circulator's job as being a blind sales call?

A It is definitely a blind sales call. It is an individual going up to someone they don't know and trying to ask them for something of a total—totally cold, with no background at all.

Q Well, does someone in charge of a sales force have a need to kind of bolster his salesmen before he sends them out?

A Yes, if you are in charge of sales people or circulators, it is very, very important to constantly pat your sales people on the back, to let them know that it is okay that you got rejected 50 times today, that it is not the

ones that are rejecting, it is the ones that you get that count. That's one of the reasons why sales people, good sales people, are paid quite a bit, because there is a very high rejection rate, and it is a very painful process to go out cold and ask people for things.

Q What motivates a person to sell a product or service?

A I would say money, more than anything else.

(p. 33) Q In your experience—maybe I better back up. What is your experience on petition drives?

A Okay, I have been involved in three different drives. One, very briefly, just as a volunteer. I was involved a little bit more in the one in Florida, which was to get Proposition One on the ballot. I was—I spent a lot of time in the county group that was working in that area, not on a state level, but in the county.

Q Are you involved in this effort to deregulate motor carriers in Colorado?

A Oh, yes, I am.

Q What involvement do you have?

A Well, I am in charge of the functioning of getting this thing on the ballot. Recruiting people for the ballot drive. I'm also responsible for raising money for the effort.

Q Are you being paid at all for your efforts?

A I get a percentage of what I raise.

Q As a practical matter, how much have you made?

A I was going to try to figure it. I think it comes to about a nickel an hour now. I have gotten \$529 over three months, and part of that is because I feel it is more important to get it on the ballot than to raise money, because—getting on the ballot means our success with it.

Q Do you wish to either—well, let me break the question down in two parts. Do you wish to be paid for your work in (p. 34) actually going out and having people sign petitions?

A Yes, I would like to do that.

Q And would you correspondingly desire to be able to pay people?

A Yes, I think as a coordinator I know that would make the success of this event positive, rather than perhaps a failure.

Q So it is absolutely clear, and maybe obvious, but you aren't asking to be able to pay the person for signing the petition?

A No, no, just I would like to pay the people who are going to go out and gather signatures.

Q All right, now, I diverted on that background. I was asking you about what motivates salesmen, and I would like to ask you what would motivate a petition circulator?

A A petition circulator can very easily be motivated by money. If he knows he can collect money for his efforts, he is far more likely to spend six hours a day at it, than he would otherwise. The way it is right now, it is kind of a painful process to go out there and stand

and ask people to sign something, and after an hour of being beaten over the head with "no's" or "drop dead" or whatever, if they were being paid and they knew that their success would relate to their pay, they would work on it. They would probably polish up their techniques also.

Q What types of rejections have you encountered from people (p. 35) as you approach them to have a petition signed?

A Okay. Several. One, I have been waved away before I even got up to ask them whether they are registered to vote or not. I have asked them if they are registered to vote, and they say, "Yes," and keep walking on by. I have asked them if they are registered to vote, and they say, "Yes, and—but I don't have any time right now."

Some of them are not registered to vote. Some don't live in the state. Some say, "Yes," and after I go through my whole spiel, I find they are not registered to vote in Colorado. They just wanted to hear what it was I wanted to say.

People have said, "This issue—I don't know enough about this issue. I can't sign it right now." Maybe he is a member of the union, and I have to discuss with him the—why this is—isn't this going to be a union buster or something. All kinds of reasons. Some are simply afraid to sign their name. They don't know what it is. The several sheets of paper with the big red warning, they look at that, and it scares them off.

Q For example, you mentioned the union issue. Give me an example of the dialogue you have had with a union member reluctant to sign a petition.

A Okay, I have had several conversations with people in unions. One of the most pressing problems that they see is that they view this as a way to bust up unions, and they say that if (p. 36) anybody can get into the business, then, you know, we won't be able to control closed shops, and this and that and the other, and an argument I make to that is, well, there is no evidence to show that the existing companies are going to be in any kind of problem, whether they are union or not. If they are good at what they do, deregulation is not going to hurt them. Sometimes it works, and sometimes it doesn't.

Q If you had a thousand dollars to spend on this deregulation of motor carriers, and you wanted to get the most signatures in effect for your thousand dollars, would you run a thousand dollars worth of ads, say the Rocky Mountain News, or would you spend a thousand dollars on petition circulators?

A I would put every penny of it in petition circulators.

Q Why is that?

A Because it is a direct way of reaching people, rather than having an ad in a paper that asks people to support us, and then somehow expect those people to go out and find our circulators, wherever they may be. This is a direct way of having a one-on-one confrontation with an individual who wants to get it on the ballot, and a potential signer. Much more effective that way.

Q There is nothing in the law to prevent you from running an ad in the newspapers?

A No.



Q What about having, say, a pizza party or something like (p. 37) that to reward the workers?

A It's my understanding we can't do that. That's compensation.

Mr. Danks: May I have just a moment, Your Honor?

The Court: You may.

(Counsel conferred.)

Mr. Danks: Very briefly, Your Honor.

Q Ms. Massie, you have been involved in recruiting petition circulators for this drive?

A Yes, I have.

Q What types of individuals have you been able to recruit to go out and actually circulate petitions?

A Several different individuals. Some of my most successful ones are those who are perhaps related to the industry, individuals who—well, one man particular just recently got denied a license to start his business, so he is helping with that. I have a woman who was denied several years ago, and she is helping just—I don't know, maybe revenge or something.

I have small trucking companies, people who want to be in limousine service, cab—tiny cab companies. All those individuals are helping with the drive.

Q If this were passed, in other words, if in November we have this initiative on the ballot, and it passed, and the motor carrier industry was deregulated, then these companies would be able to go into business?

A Oh, yes. Some of them are specifically doing it, knowing (p. 38) that if this were to win, they could greatly expand their business, or go into business.

Q So, while they are not paid directly, they may have a financial reward at the end?

A Yes, sir.

Mr. Danks: I have no further questions, Your Honor.

The Court: All right.

### CROSS-EXAMINATION

By Ms. Gartland:

Q Ms. Massie, you made the statement that it is more important to get—at this time, it is more important to get the measure on the ballot than to raise money. Could you explain what you meant by that statement?

A Well, the way it is set up right now, if I raise money, I can't spend it directly in getting people on the ballot, so I have spent most of my time and effort making sure that I have enough signatures to get on the ballot, and right now, you know, raising money is not going to do me any good.

Q Are you paid for your time spent trying to recruit people getting signatures?

A No.

Q Would you like to be paid for that time? I guess that's not a fair question.

A Well—



Q Probably—

(p 39) A I'm sure—

Q Okay, you have—

A I'm not sure—

Q You made the statement, based on your experience in sales and working with sales people, that money motivates them more than anything else, which I suppose is the general understanding. If you hired someone to collect signatures and paid them on a per signature basis, say 50 cents a signature, would he not, if he is or she is a good sales person, then be interested in getting as many signatures in the shortest amount of time possible?

A Yes.

Ms. Gartland: I have no further questions. Thank you.

Mr. Danks: No questions. Your Honor.

The Court: Thank you, Ms. Massie. You may step down.

Mr. Danks: May I have one minute before calling the next witness, Your Honor?

The Court: You may.

Mr. Danks: Mr. Ed Hoskins, please.

#### ED HOSKINS

called as a witness by the plaintiff, being first duly sworn, on his oath testified as follows:

The Clerk: Please state your name and address for the record.

The Witness: My name is Ed Hoskins. I live at 150 (p. 40) South Clarkson, Denver, Colorado.

#### DIRECT EXAMINATION

By Mr. Danks:

Q Mr. Hoskins, what is your occupation?

A I am a Certified Public Accountant

Q What is your educational background to qualify you for that profession?

A I have a Bachelor's degree from the University of Illinois, and I have the requisite accounting hours obtained at the University of Colorado and Metropolitan State College.

Q As a Certified Public Accountant, do you have to pass a specific examination?

A Yes.

Q Actually, a series of examinations, isn't it?

A Well, it is a multi-day examination, with several parts.

Q Do you have your own firm, or are you with others, or what's your CPA firm like?

A I am a sole practioner, in business for myself.

Q Are you a plaintiff in this lawsuit?

A Yes, I am.

Q What connection do you have with this effort to deregulate motor carriers?

A I am a member of Coloradans for Free Enterprise, and from the very beginning, since last spring, have been interested and—I think enthusiastically so, about the prospects of this (p. 41) initiative and about the results that it would—would be there, if we won.

Q Are you a registered elector in the State of Colorado?

A Yes, I am.

Q Based upon your experience, and this may be asking the obvious, but can people be motivated by money?

A Yes.

Q And give me some examples, as a CPA must experience, of people motivated by money.

A Yes, I guess I'm like everyone else, most aware of my own motivation by money. I'm in the business I am in, I'm in the profession I'm in, because, for one reason, I thought it would be a lucrative one, as well as one I would enjoy doing.

Q And I don't mean to cast aspersions on your character, but just to get a clear record here, does the fact that you are motivated by money cause you to violate the law?

A No. No, I have no desire to be brought into this court or any other on a criminal charge.

Q Do you desire to be able to pay circulators of petitions in connection with this drive?

A Do I desire to pay circulators?

Q Yes.

A Yes, I—I have been—if I could elaborate, I have been spending a lot of my time away from my practice, trying to help get this on the ballot, and a lot of valuable time away from that (p. 42) practice, and I would much rather take a fraction of my fee, that I might be earning otherwise, and pay a college student, for instance.

Q So, you have actually been out on the streets, so to speak, circulating the petition?

A Yes.

Q And you feel you could make more money at your CPA practice and hire someone else?

A I know I can.

Mr. Danks: I have no other questions, Your Honor.

### CROSS-EXAMINATION

By Ms. Gartland:

Q Mr. Hoskins, recognizing that taking time away from your practice involves a fair amount of personal sacrifice, why are you doing it? Why are you out there circulating petitions, if you are not getting paid?

A The reason I'm out there is I feel there is a great need in Colorado to open up the transportation industry.

Q So you believe in the merits of the measure, in other words?

A Certainly.

Q And I assume you wish to convince other people that the—of the merits of the measure?

A Yes.

Q At least, enough to get it on the ballot?

A Yes. I—yes.

(p. 43) Q Do you find yourself in your efforts discussing the various provisions of the law, the proposed law, with members of the public?

A Yes, I do.

Q Does your familiarity with the measure, the fact that you were involved in drafting it, the fact that you believe in it, help you explain to the public why it is a worthwhile venture?

A Yes.

Ms. Gartland: I have no further questions.

Mr. Danks: No further questions. We rest our case.

The Court: Thank you, Mr. Hoskins. You may step down. Do you have witnesses to present, Ms. Gartland?

Ms. Gartland: I do, Your Honor. I would like to request a brief recess, if I may.

The Court: Very well, we will take five minutes. You may announce.

(The Court recessed from 9:40 a.m. until 9:50 a.m.)

The Court: You may proceed, Ms. Gartland.

Ms. Gartland: For our first witness, Your Honor, I would like to call Mrs. Betty Chronic to the stand.

## BETTY M. CHRONIC

called as a witness by the defendants, being first duly sworn, on her oath testified as follows:

The Clerk: Please state your name and address for the record.

(p. 44) The Witness: Betty M. Chronic, 4705 Shawnee Place, Boulder, Colorado.

## DIRECT EXAMINATION

By Ms. Gartland:

Q Mrs. Chronic, where are you presently employed?

A Department of State, for the Secretary of State.

Q And what is your position there?

A The Director of the Division of Elections and Licensing.

Q And how long have you held that position for the State of Colorado?

A That precise position for the State, since July 1 of 1977.

Q Okay, in your capacity as Elections Director, are you familiar with the records which show when initiative petitions are submitted to the Secretary of State's office for ballot title designation?

A Yes.

Q Would you testify, Mrs. Chronic, from your records, when the plaintiffs' petition, plaintiffs in this



case, was submitted to the Secretary's office, Secretary of State's office, for ballot title designation?

A The Secretary of State and the other two members of the Title Board are required to meet first and third Wednesdays of each month, if a draft has been submitted. The petition in this instance was submitted prior to—immediately prior to the February 15th ballot title setting meeting, and the ballot title (p. 45) was set on that date.

Q On February 15th?

A Yes.

Q So the ballot title meetings are the first and third Wednesdays of every month, is that correct?

A Yes, providing the draft—there must be a draft for them to consider.

Q Does the board, by law—does the board meet every month of the year?

A They can, if there's a draft. There is no requirement as to when an initiative may be started.

Q Okay.

A So, if a draft came over from Legislative Council, presented by proponents, the title setting board would be convened.

Q Would it be required to convene on the next Wednesday, either middle or last—

A Right, either the first or third Wednesday of the month.

Q So, the longest anyone would have to wait for a hearing would be two weeks?

A Two weeks.

Q Was the petition that was submitted by the—the petition of plaintiffs was heard by the board on February 15th, is that correct?

A Yes.

Q And the title was fixed on that date?

(p. 46) A Yes.

Q Would you examine, Mrs. Chronic, Defendants' Exhibits B-1, B-2 and B-3, and tell—identify for the Court the—the clerk will present them to you—what those exhibits are.

A B-1 is a copy of a log, this one is in my handwriting, 1978, and from the files on initiative drafts and referred measures, we generated this log in order to be able to track the processes going through the office. It was a handy reference tool, so this is an exact copy of what we have in our files.

Q And the document you have in your files is a regularly kept record of the Secretary of State's office?

A Beginning in 1978, it was. We found that many times people asked us for information, and we had to go back and dig out the individual file folders themselves and search through them. This was a method to keep track make it available to the public and ourselves, as to the process. So, beginning in '78, this was the process.

Q Would you also identify Exhibits B-2 and B-3?

A B-2 is the 1980 log, was kept by the administrative officer, who was working for the Secretary of State,



and the division which I had in reporting to me. Some entries are in her handwriting. Some are in mine. Depending upon which one of us was in fact handling that particular situation at the time, if she were on vacation or unavailable, and the person whose handwriting appears in most of it is Barbara Lilly, who is no longer there.

(p. 47) Q And most—and this is also a log of all initiative petitions submitted to the Secretary of State's office in 1980?

A Right.

Q What about Defendants' Exhibit B-3?

A That is the 1982 log, and again, the same process.

Ms. Gartland: Okay. At this time, Your Honor, I would like to move for admission of Defendants' Exhibits B-1, B-2 and B-3.

\* \* \*

(p. 51) The Court: All right, the objection is overruled, B-1, 2 and 3 are received.

Ms. Gartland: Thank you.

(Defendants' Exhibits B-1, B-2, and B-3 received in evidence.)

#### DIRECT EXAMINATION (Continued)

By Ms. Gartland:

Q Mrs. Chronic, after the Ballot Title Board fixes the title, is there not one more thing that has to be done before the petition can be circulated?

A Yes, proponents must receive that ballot title, which they do the next day after the Title Setting Board meeting, mailed to them, and they are given the offer of picking a copy up. Then they must send that in, together with the summary set by the board, and a fiscal note, and they must prepare their petition format. That is again submitted to the division for review, and upon approval, then the petitioners may begin to circulate. (p. 52) That sometimes takes different amounts of time.

Q Once a petition format, after the title has been fixed and has been given to the proponent, and they submit it to have the petition in final form for its approval, how long on the average does it take your office to actually approve the petition format?

A We have been as fast as two hours and as long as five days, to the best of my recollection.

Q What's the average? Can you estimate?

A Less than 24 hours.

Q So, as a practical matter, then, the proponents have six months from the time the format is approved to get their signatures?

A That's right.

Q And the petition has to be filed at least three months before the election?

A That's correct.

Q So am I correct in my mathematics, to fully utilize the full six months, proponents should have their petition formats approved by February 6?

A Yes, that's correct.

Q Now, looking on Defendants' Exhibits B-1, B-2 and B-3, under the column "date format petition approved"—

A Umm.

Q Does it appear to you that most of the proponents of petitions in Colorado, in the last six years, eight years, or (p. 53) six years, excuse me, are utilizing the full six months available to them under Colorado law to circulate petitions?

Mr. Danks: Objection, Your Honor, the document speaks for itself.

The Court: Overruled. You may answer.

A Some do and some do not. There are a number, as you can see from the exhibits, that do in fact come and appear before the board after that early February date. A few do make it before that time.

Q Okay, is there anything that would prohibit a proponent from coming before the board to have a title fixed as early as December of the year preceding the election?

A No, if you will notice, Exhibit B-3 shows, under A that a ballot title set was—was set on the 15th day of April, in '81, for the '82 election.

Q So, as long as over a year and a half before the election?

A Yes.

Q Mrs. Chronic, have you, pursuant to my request, examined your records for 1978, 1980 and 1982, to deter-

mine the number of initiative petitions which were approved for circulation that obtained enough signatures to be placed on the ballot?

A Yes, in fact, I did do that.

Q For the year 1978, how many petition forms were approved for circulation?

A Five petition forms were approved, five ballot titles set.

(p. 54) Q How many of those five were actually circulated, according to your records?

A According to our records, one had no political committee formed, which meant they spent no money, reported no money. Therefore, we considered that four had a possible activity to circulation, and one petition was filed.

Q One of the four that was circulated actually obtained enough signatures to be placed on the ballot?

A Uh-huh.

Q For the year 1980, how many petition forms were approved for circulation?

Mr. Danks: Your Honor, I'm going to object on the grounds of relevancy.

The Court: Overruled.

A Ten petition forms were approved. Two additional ballot titles were set, but were withdrawn. The measures were withdrawn prior to that petition form approval.

Q Of the ten petition forms that were approved, do you know how many were actually circulated, or can you tell from your records?

A Again, from our campaign records, of performance records, of those ten, four had no committees formed, either pro or con. Six had possible activity for committees, four petitions were filed. Two were on the ballot.

Q So, of the six circulated, four reached the ballot?

(p. 55) A Right.

Q For 1982, how many petition forms were approved?

A Ten petition forms were approved. One ballot title was set, and was withdrawn prior to petition form. There were three that our records indicate that no committee was formed, three issues. Seven were possibly circulated. Of those seven, four petitions were filed. One, casino gaming, was removed by the Secretary of State for fraudulent circulation, and three were on the ballot.

Q Okay, so of the seven that were circulated, according to your records, four obtained enough signatures?

A Right.

Q But one of those four was disqualified?

A Right.

Ms. Gartland: I have no further questions of this witness.

#### CROSS-EXAMINATION

By Mr. Danks:

Q Ma'am, in your position with the Secretary of State's office, you are responsible for enforcing the election laws that come before the Secretary of State's office.

A I'm responsible for the administration of the election laws. Enforcement is—if you are speaking, Mr. Danks, in a criminal sense, no, our office is not responsible for that.

Q But you make sure that, to the best of your ability, that (p. 56) the petitions, for example, that you accept, comply with the law?

A Yes. Yes, we do examine them.

Q Now, you are a paid employee, is that correct?

A That's correct.

Q Now, in exercising your duties, you are a law abiding citizen and you don't violate the law, is that correct?

A That is correct.

Q Now, does the fact that you are paid for your work, in any way cause you to violate the law?

A I know of no way, that being paid causes me to violate the law.

Q Do you have any disagreement with the sort of capitalist principle that people should be paid for their work?

A Mr. Danks, I have no personal disagreement with that. I also have a disagreement that the term "volunteer" is not an acceptable one. I have spent a good portion of my life as a volunteer, and therefore I think it takes both kinds. I do volunteer work at this point. I am currently serving as a volunteer in a function.



Q But you have no—well, let me ask the question this way. You are appearing here as a representative of the Secretary of State's office, and it is your job to enforce the laws as they are written?

A My job to administer them as they are written.

Q And the law at the present time says that there can be paid (p. 57) petition circulators, is that correct?

A That is correct. That is not a decision, however, that would come to me as an administrator.

Q And as an administrator, you would be willing to enforce equally a law that says you could allow paid circulators?

A When I was employed by the State of Colorado, I had to sign a statement that I would—that I would abide by the U.S. and Colorado Constitution, and the laws of the State of Colorado. I will do that.

Q And if the laws change, you would follow the law?

A That's right.

Mr. Danks: I have no further questions, Your Honor.

Ms. Gartland: No further questions, Your Honor.

The Court: Thank you, Mrs. Chronic. You may step down. Next witness.

Ms. Gartland: Your Honor, at this time I would like to call Carolyn Sue Thomas to the stand.

#### CAROLYN SUE THOMAS

called as a witness by the defendants, being first duly sworn, on her oath testified as follows:

The Clerk: State your name and address for the record.

The Witness: My name is Carolyn Sue Thomas. I live at 7980 South Poplar Way, in Englewood, Colorado.

#### (p. 58) DIRECT EXAMINATION

By Ms. Gartland:

Q Where are you presently employed?

A At the National Center for Initiative Review, in Englewood.

Q And in what capacity are you employed by that center?

A I am the Executive Director.

Q Would you advise us all—am I correct, is it Mrs. Thomas?

A Yes, it is Mrs. Thomas.

Q What is the National Center for Initiative Review?

A The National Center for Initiative Review is a non-profit private corporation that was established in 1981 to study how states allow petition measures to achieve ballot status, and we look at all different kinds of provisions in the states that allow this type of law-making, and our information is available to anyone who is interested in this particular field.

Q What are the motivating factors that led to the establishment of the Center?

A Well, I think on the part of the original board of directors was that—a realization that there was no central



clearing house of information about the initiative process, and there hadn't been any kind of comparative analysis done of how the states managed the process, and so the National Center was set up, and started accumulating literature that was currently available, started doing some digging on our own to come up with information that was accurate about how the system works.

(p. 59) Q So, how would you describe the principal activities of the Center at the present time?

A The principal activity at this time is purely educational and research.

Q And that education and research, is it related specifically to the initiative process?

A Yes, although we do peripherally keep track of popular referendum and some recall activities. Our main concern is the initiative, whether it is a statutory initiative or constitutional initiative.

Q And in what localities do you study the initiative process?

A Well, we keep initiative activity of all 23 states that now allow access to the state ballots by initiative process, but in addition to that, we track legislative proposals in all 50 states, if they would somehow change the status quo of the initiative process in that state.

Q How comprehensive do you watch every single initiative petition in the country??

A Yes, we pick it up when it is filed into the system, and whatever the first legal requirement is by the state, whether that be Legislative Council or the Secretary of State's office. In some cases, in states where there is no

pre-filing required, then we still do depend on the Secretary of State's office to keep us informed as to what they knew is happening on an initiative campaign in the state.

(p. 60) Q Does the Center, in addition to tracking initiatives across the country, do research or study into the initiative processes that are at work in the states, in various states?

A You mean the individual provisions?

Q Yes, the different provisions that states have related to the initiative process, and does the Center do any research into comparing those provisions?

A Yes, we do, because one of the very first things that we found out was that there was a—there were very few universal truths about the initiative process, from one state to the other.

There are some very basic, across-the-board requirements, but even these changed. If we talk about the signature requirement, not only can the percentage of signatures change, but the base of that percentage requirement can change, and so even though you could go through and pick out all the requirements of the 23 states, it was not easily available information, and so we put together a chart in 1983 that has been widely distributed, that includes not only the 23 states that have a statewide initiative process, but we also tried to include non-initiative states, and show that, the correct amount, on it.

Q You began working at the Center at what time?

A In 1981.

Q What was your position?

A When I first began with the Center, I referred to it as a (p. 61) jack of all trades, but in August of '81, I took over the position of Research Director, which I had until March 15th of this year, when I kept the duties of Research Director and also assumed the title of Executive Director.

Q Would you summarize your educational background?

A Yes, I am a graduate of the University of Colorado at Denver. I completed all courses in December of 1980, and the degree was conferred on May, '81, and I am—

Q And in what field?

A I'm sorry, political science, and I have since then been enrolled at the Graduate School of Public Affairs, as a candidate for a Master degree in public administration. However, I am on sabbatical this year. I am not currently enrolled.

Q While you were Research Director for the Center, what were your primary responsibilities?

A Well, my primary responsibilities, of course, were to keep track of the initiative and legislative activity, concerning the—the nationwide happenings in the initiative field, but not only that. I have—it involves me to do public relations for the organization, to work with consultants, if and when you are called in, and just to do anything. Try to build our files, because one of our basic concerns is to build a very comprehensive library of literature available on the initiative process.

Q Does the Center do any research, or does it concentrate at all on the extent to which differing states' provisions affect the (p. 62) process as it has been historically viewed?

A We have done some publication of this type of information, in the newsletter that we do, called "Initiative Quarterly." Our work kind of pales in comparison to some of the work that has been done by Dr. David Mackelby, the leading academic in this field, and a person we work with.

Q Have you personally worked with Dr. Mackelby at any time?

A Yes.

Q When was that?

A When I came to NCIR. We discovered Dr. Mackelby almost immediately after forming the organization, because he was doing a Ph.D. dissertation at that time on direct legislation, and very early in our existence we formed an informal, and later formal, consulting arrangement with Dr. Mackelby, and I consider him my mentor and tutor in teaching me the basics of the initiative process.

Q And how long have you worked with him?

A Continually since then.

Q Where is Dr. Mackelby at the present time?

A He is at the Brigham Young University.

Q And what is his capacity there?

A He is an Associate Professor of Political Science.

Q And what is his reputation?

Mr. Danks: Objection, Your Honor.

Q I'm sorry, what is his specialty?

(p. 63) A His specialty is direct legislation.

Q By direct legislation, what exactly do you mean?

A I mean the process of—the processes that are available to citizens to petition their government.

Q And those include?

A The referendum, the popular—I'm sorry, the initiative, the popular as opposed to the legislative referendum, and recall.

Q In your capacity as Research Director, and now as Executive Director at the Center, have you been used as a resource by different agencies around the country?

A Yes, we—we get calls from a very diverse group of people, requesting information. We have started keeping track of these in a more formal manner than we did our first 18 months of existence, but, for example, during 1983-84, we have been contacted by I would consider the most major news agency in the country, including the three television networks, the McNeil-Lehr Report, Jack Anderson, Public Radio in Wisconsin, and New York, many of the leading newspapers, including the Washington Post and New York Times, L.A. Times, Los Angeles Herald Examiner.

We also have had many contacts in academic communities asking for information, or for us to provide data for numerous articles and things like that. In addition, we—we are contacted many times by people who have opposing view points on the initiative process, but our

reputation has come to be such that we provide information on either side.

(p. 64) Q Okay, Mrs. Thomas, would you please examine Defendants' Exhibit D, and I would like to ask you to identify what that exhibit is. The clerk will have it for you.

A Yes.

Q Would you identify that exhibit, please?

A Yes, this is a list of contacts that we have had at NCIR, since January through—I think I did it on the 18th of June, 1984, which basically breaks down into separate categories the type of request for information that we have received. Oh, I'm sorry, there is—it also includes 1983.

Q Have these contacts been with you personally?

A Yes, I would say probably 99 percent of them are with me personally.

Q And does the list include both phone contacts and mail contacts?

A Absolutely.

Q Has the Center sponsored any educational seminars or programs related to the initiative process?

A Yes, we have.

Mr. Danks: Your Honor, excuse me, counsel now has asked a couple of questions about Exhibit D and has gone on to another line without offering the exhibit.

The Court: That's not a violation of the rules, Mr. Danks.



Mr. Danks: Well, I submit, Your Honor, that it is.

(p. 65) The Court: I said it is not. So, it is not. You may continue.

Q Proceed.

A I'm sorry—

Q Yes, my question was has the Center been involved in any way or sponsored or have been involved in any educational programs or seminars related to the initiative process?

A Yes, we have funded two national seminars on the initiative process. The first was in November of 1981. That was held here in Denver. The second one was in January of '83, in Washington, D.C., and these drew from—from people nationwide who have some interest in the initiative process, people who would speak with some authority on an aspect of the initiative process, and participant level was between 85 to 100, 125 people, in each seminar.

Q Were you personally participating?

A I was not a panel participant. However, I was very active in reaching speakers, identifying possible speakers, identifying programs, and fitting their program into the overall program.

Q Are there any other centers other than the National Center for Initiative Review that track initiative petitions to the same extent your center does?

A Not that we've been able to identify. There are groups, at least two groups in Washington, who also publish newsletters that deal with the initiative process, but

their interest is that—(p. 66) is entirely different from ours. Where we are interested specifically in the mechanism of it, they are interested in issues. So we do not take stands on issues. We study the process itself.

Q Have you personally written any articles that have been published relating to the initiative process?

A Yes, I have, in 1982, I, along with David Mackelby and Walt Kline, did a paper that was presented at the American Political Science Association meeting here in Denver. I have—I do most of the writing of articles in our newsletter, which is published quarterly, and in addition to that, on a more formal basis, since January of this year, I have been doing a routine column in a magazine called "Legislative Policy." That is an initiative update, and the current issue also there is a feature story that I have written.

Q What is the title of the publication of National Center for Initiative Review?

A "Initiative Quarterly." We refer to it as "I.Q."

Q How often is that published?

A Usually quarterly, although we do from time to time, when activity and deadlines call for it, we publish an update, but it still goes under the title, "I.Q."

Q What is the primary focus of "Initiative Quarterly"?

A It has three main focuses. First, looks at some specific portion of the initiative process and describes it in detail. (p. 67) Second, it lists all current petition drives that are underway throughout the country and their status, and, thirdly, we include a section on legislative activity, whether that be in a chart form or in article form.



Q And you write most of the articles in that publication?

A I do.

Q Are there other staff members at the Center besides yourself at the present time?

A Well, I suppose it is unfair to say that I'm the only staff member of the NCIR, although I'm the only person that's on payroll 100 percent. I have support staff in the persons of an editor, who serves part-time for the newsletter, and financial accounting type person, who serves part-time to the Center in that capacity.

Ms. Gartland: Okay. Your Honor, I would like to move for admission of Defendants' Exhibit D.

\* \* \*

(p. 68) The Court: What's the purpose of the offer?

Ms. Gartland: I'm attempting to qualify her as an expert in the field of initiative process. She is the Executive Director of this Center which specializes in studying the initiative process.

The Court: All right, for that limited purpose, it will be received. You may proceed.

(Defendants' Exhibit D received in evidence.)

Ms. Gartland: At this time I would like to ask the Court to designate Carolyn Sue Thomas as an expert in the initiative process.

\* \* \*

(p. 69) The Court: If that's the basis of your objection, the objection is overruled. You may continue.

\* \* \*

(p. 70) DIRECT EXAMINATION (Continued)

By Ms. Gartland:

Q Mrs. Thomas, would you provide us with a brief historical perspective about the initiative process in this country, when it came into being and for what purpose?

A Yes, the whole concept of direct democracy, in other words, citizen-generated activity, whether it be in the area of a generated law, or a popular referendum or recall, was one of the fundamental planks in the Progressive Party in the latter part of the nineteenth century, and certainly part of the twentieth century.

The first states that included this in their state Constitution was South Dakota in 1898 and Oregon in 1898. South Dakota, though, was the first to get an initiative on the ballot, and it is really considered the birthplace of the initiative process.

And the whole argument for this kind of activity was that state legislators at that time, particularly in the West—it is a western phenomenon—had been corrupted by outside interests and did not always address issues that were of concern to the citizens, and so by meeting special requirements citizens were allowed to propose their own laws and have them qualified for the ballot after these provisions had been satisfied.

Q How many states have adopted initiative laws?

A At this time, there are 23 states, plus the District of (p. 71) Columbia, that allow access to the state ballot by the petition process.

Q And did most of those states establish their initiative provisions in the early 1900s, or how were those laws established throughout the years?

A Yes, this was a pretty big move, in the West, during that early part of the twentieth century, and 19 of the

23 states—I'm sorry, 18 of the 23 states passed their initiative laws before 1918, and the states that have been added since then have put quite a few more restrictions on the process than the earlier states.

Q When was the process established in Colorado?

A 1908 was the year that it was adopted.

Q I would like to ask you to examine Defendants' Exhibit E. Would you identify this exhibit for the Court, please.

A Yes, this is a—this is a chart called an "Initiative Provisions by State," that was published by the National Center for Initiative Review as an insert of our newsletter in the third quarter, 1983.

Q Were you personally involved in the preparation of this chart?

A Yes, I was. I'm the one who pulled the facts together on it.

Q Generally, what—just very generally, without looking at specifics, what aspects of different states' initiative process (p. 72) is compared there?

A Well, as I mentioned earlier, when we started trying to find out as much as we could and learn as much as we could about the initiative process, one of the first things we realized was the diversity of provisions from one state to another, and there was just no one source available where you could quickly get an idea how the states compared on rigidity or elasticity of their initiative provisions, so over a period of I would say the first 18 months of our existence, we discovered several different categories that might be found in at least one state's initiative laws, and so over time I kind of started adding to that, to see if

we could come up with a one-page reference chart that could be used by anyone who—maybe someone who was even a neophyte in dealing with the petition process, and this chart was the result of that work.

Q Does this chart compare the requirements for getting a measure on the ballot in Colorado with the requirements in other states?

A Yes.

Ms. Gartland: Your Honor, at this time I would like to move for admission of Defendants' Exhibit E.

The Court: Mr. Danks?

Mr. Danks: May I voir dire, Your Honor.

The Court: You may.

\* \* \*

(p. 75) (Defendants' Exhibit E received in evidence.)

#### DIRECT EXAMINATION (Continued)

By Ms. Gartland:

Q I would like to direct your attention to the column, "Signature Base Requirements." What information is shown in this column?

A First of all, there is—you are talking constitutional or statutory?

Q Constitutional amendments, I'm sorry.

A Under the State of Colorado, we show that the signature base requirement is five percent of the vote of the last vote cast for the office of Secretary of State, when that office is put on the ballot.

Q And how does that—the stringency of that requirement compare with the same requirement in the other states listed?

A Well, when we look at the constitutional amendment, there appear to be only two other states that have a lower signature requirement. However, what you have to consider is that lower percentage is based on a different election figure. So, if you look at Massachusetts, where under a constitutional amendment there is a requirement of three percent, it is three percent of the total number of votes cast for the office of Governor, which might be a higher base than that for the office of Secretary of State.

Q And the only other state that might have a less stringent (p. 76) requirement?

A North Dakota.

Q Which is four percent of population.

A Right.

Q Which again could be a higher figure than five percent of the vote for Secretary of State?

A Could be, yes.

Q All other states have a stricter signature base requirement than the State of Colorado?

A For constitutional amendment.

Q I note there are some states that—there are less than 23 showing signature base requirement. Are there some states that do not have signature base requirement, some of the 23?

A Well, I think that may be where there is question—when we say 23 states, at the National Center for Initiative Review, we are looking at states which allow access to the ballot, either through a statute or initiative, or referendum. Some allow one or the other or both, but—

Q So we have actually only—it appears to be—17 that allow access to the ballot of an initiated amendment, constitutional amendment?

A Right.

Q Would you—moving along to—under “Constitutional Amendment” to the heading “Geographic Distribution Requirements,” what is a geographic distribution requirement?

(p. 77) A Well, some states have placed a further restriction on signature gathering, by saying that not only do you have to have the base figure that we are talking about, in our case the five percent, but that these signatures have to be distributed somehow geographically, somehow throughout the state, to show that it is not a regional interest issue. This is—this is something that is happening in about—I would say about half the initiative states. We do not have that requirement in Colorado.

Q Moving along to the column “Filing Deadline,” as soon as—well, is that the date prior to the election that the petition must be filed, with the Secretary of State’s office?

A That’s correct.



Q How does—what is the shortest period of time prior to the election within which the petition may be filed?

A Well, there is—one area that I should clarify here, and we are talking basically in this column—you will notice the one immediately preceding it has something to do with the information in this column, and we are talking about whether a state has a direct initiative or an indirect initiative. In other words, does it have to be submitted to the state legislature before it is submitted to the ballot, which is indirect, or does it go directly to the ballot upon satisfaction of the requirements. Colorado is a direct initiative state and it seems to be just about in line with other states that employ (p. 78) direct initiative. It is very common for those filing deadlines to fall within 90 to 120 days before the general election, unless the state has some cap on circulation time.

Q Thank you. If we skip the column headed "Statutes" and move over to the last category of information, under the column headed "Signature Certification Method Used," would you explain the legend showing the different types of signature certification methods that are used by the states?

A Most initiative states have some formal process, and included in your laws, that mandate the signatures on a petition be checked back against the voter registration lists to determine that the signatures are valid ones, and basically there are three types of methods that are used. On this chart they are keyed, I, which means that the signatures are checked individually against the registration list. The RS means that the state has employed some

random sampling technique, that if a certain content level is met on the random sample, then the measure is qualified. If there is a question about the number of valid signatures, as a result of the sample, then they go into the individual certification of signatures.

You will notice under Colorado that it is keyed PV, which means that we operate under the presumed validity principle, and that means that signatures are—must be accepted by the Secretary of State as valid, if all of the proper affidavits have been signed by the circulators.

(p. 79) Q So there is no checking or verification of signatures?

A Not to my knowledge. Unless there is a challenge, either by opposition—the first time through, they are accepted as valid.

Q So the Colorado method you would say is the most lenient of all the methods employed?

A Yes, in my opinion, that's correct.

Q The last—

Mr. Danks: Your Honor, I'm going to move to strike all this testimony on grounds of relevancy. If the Attorney General is attempting to show that there is a compelling state interest in deterring initiatives from being placed on the ballot that would be the only possible relevancy. They have attempted to show, I assume, by this line of questioning that certain states impose a geographical requirement and certain states have a higher percentage of voters in order to get on the ballot, and Colorado does not have these requirements, therefore, it imposes the

burden of requiring only volunteer petition circulators, and that somehow compensates.

Since we impose the burden of not allowing paid circulators, then we correspondingly don't have some of the other requirements. I submit if the Attorney General wants to make that as an argument, then that should be set forth, but that's the only possible relevancy.

In other words, are they asserting there is a compelling (p. 80) state interest in deterring it being on the ballot?

The Court: I think that's the object of the lesson. If that's a motion, it's denied.

Mr. Danks: It was a motion, Your Honor.

The Court: Very well, denied.

Q Mrs. Thomas, the chart also contains some columns in the far right side of the document, headed "Your Initiative Process," and "Number of Initiatives on Ballot up to 1969." I would like to direct your attention to those particular columns.

A Okay.

Q First heading there is "Your Initiative Process Adopted," the second "Number of Issues on the Ballot up to 1969." How does Colorado fare when compared with other states on number of issues on the ballot historically up to the year 1969?

A Until 1969?

Q Yes.

A I would say that it is right up there. You can look at the chart and see by the number of measures that

qualified for the ballot that Colorado is in the company of such heavy initiative states as California, Arizona, Oregon and North Dakota.

Q And am I correct that the only states that surpass Colorado in number of initiatives on the ballot were California, Oregon—and Washington? Or, wait a minute—

A For 1969?

Q Or up to 1969.

(p. 81) A Were Arizona, California, North Dakota and Oregon, all had more than we did.

Q All right, for the time period 1970 to 1979, where does Colorado fall in the ranking of states, according to number of initiatives on the ballot?

A Well, just about in the same place. Just—it would appear that Colorado ranks second in the number of initiatives that appear on the ballot during that time. California had 22. We had 18. Michigan 14, Oregon 17, Washington 14, so right up with the states that are considered to be traditionally heavy initiative states.

Q And then for the last time period, 1980 to 1982, the chart shows Colorado had 128 measures on the ballot. It was surpassed only by California, Oregon—

A You are looking at the total number.

Q I'm sorry, seven measures on the ballot, which was surpassed by California, Montana, and equalled by Michigan, am I correct?

A Equalled by Oregon—by Michigan.

Q It was again in the top four?

A Yes.

Q Has the use of the initiative process nationwide varied from the time of the start in the early 1900s to the present?

A Yes, so far the high-water mark for initiative activity was 1914, when there were 86 initiatives that appeared on statewide ballots, and then we went through until maybe the '40s (p. 82) or '50s sort of a decline of activity, but that started building up again in the early '70s, and since the early '70s has had a steady increase with each election cycle, not only in the number of measures that made it to the ballot, but in the number of proposals that are submitted to be accepted for circulation.

Q Okay, have you personally done any research on the percentage of persons—excuse me, percentage of petitions circulated which have reached the ballot in any given year?

A Yes, tables that included this kind of information were part of the paper that we did—that I did with Mackelby and Kline for the American Political Science Association in 1982. Historically, approximately one out of four issues that started an initiative process can actually qualify, meet the requirements for ballot placement.

Q And for what time period?

A From about '78 to '82.

Q And that was a nationwide study?

A On the initiative, yes.

Q So, if the record in this case shows that Colorado's average was higher than 25 percent, it would be higher than the national average?

A Yes.

Q Mrs. Thomas, would you explain what is meant by the term "Initiative Industry"?

A The initiative industry is a group of businesses that seem (p. 83) to have gotten their start by being able to capitalize on provisions in a state, by gaining access. Leadership in the initiative industry today is the State of California, where they have some sort of unusual provisions that allow for the collecting of signatures by mail. The initiative industry, that is kind of an umbrella name, that would include firms that specialize in drafting initiative proposals and handling any legal challenges that might be made during the titling process, firms that specialize in collecting clean signatures, or unclean signatures. I imagine they are more worth their money if they collect clean signatures. Firms then that also can be consultants in fund raising, media campaign, overall campaign management.

Q Is this a fairly recent phenomenon, or have these industries been around for several years?

A Well, I think as far as the campaign management aspect of the initiative industry, it's been around quite awhile. That's not anything that's new. What's new is the tendency in many states to have signature specialization firms, and these firms can operate from paying 25 cents to a signature, for each signature they collect, which I think is probably the most common type to, you know,



pay on a per signature basis for someone collecting in a shopping center or something like that, and go to the other extreme of what we find in California, many times on the direct mail signature campaigns, where firms might collect up to \$1.50 for each signature that's returned in a direct mail (p. 84) campaign.

Q So the firm is hired by the proponent of the initiative?

A That's correct.

Q And then the firm takes charge of getting the necessary signatures?

A That's correct.

Q Do you have an opinion as to whether the use of a paid firm to gather signatures by the proponents of a measure has an effect on the manner in which those signatures are collected?

A Yes, there have been cases documented in some of the current literature, and especially some of Mackelby's work, that shows some of the possible abuses of—in signature collection phases, where especially if collectors are paid on a per signature basis, that they are more interested in volume than in quality, and so they might brush aside a question from someone who wants to know about what the initiative proposal would do. They might just hand them a brochure and send them on the side, so they wouldn't obstruct the path to the petition.

I have done some talking with state officials when I track initiatives. We have talked about their experience in verifying signatures and differences of validity rates

on campaigns where they have paid circulators and haven't had any paid circulators.

Q Do you know any specific state that has kept the exact statistics on validity rates when paid versus unpaid circulators (p. 85) are used?

A I can say I have in fact received information from the State of Ohio from the Director—

Mr. Danks: I'm going to object to this, public opinion polls, hearsay.

The Court: Sustained to hearsay.

Mr. Danks: Pardon me?

The Court: I said it is sustained on hearsay.

Q Do you have an opinion, Dr. Thomas, on the question of whether the use of paid petition circulators versus unpaid petition circulators affects the manner in which the merits of a proposal are discussed by the circulator?

A Yes, my opinion is that if someone is being paid on a per signature basis, that it is in their interest to collect large numbers of signatures, rather than taking time to explain what the proposal would do, and so the quality of total signatures would probably not be as high as if you had a dedicated volunteer who was really very interested in the proposal itself.

Q Are you aware of any published studies which compare the success rate of petition drives, using paid circulators, with those using unpaid circulators?

A Yes, the most recent complete list that I have seen was done in 1982, following the 1980 and '82 elections, by

David Schmidt, who was the editor of a newsletter called "The Initiative News Report," and he went through and categorized petition ballot (p. 86) measures by whether or not they had been paid or unpaid signature drives, and it was his conclusion that—

Mr. Danks: Objection, hearsay, Your Honor.

The Court: Overruled.

Q Go ahead, I'm sorry.

A That the volunteer drives enjoy a much higher success rate at the ballot box than the paid signature drives do.

Q Did he come to any conclusion on the extent to which the volunteer drives are more successful than the paid circulation drives?

A As I recall, it was about twice as often that they were successful at the ballot box.

Q Mrs. Thomas, will you examine Defendants' Exhibit F and identify that exhibit, please?

A Yes, this is an excerpt from The Initiative News Report that does contain the information that we were just discussing about 1980 and 1981, initiative and referendum.

Ms. Gartland: At this time I would like to move for admission of Defendants' Exhibit F.

Mr. Danks: Objection on the grounds of hearsay. I don't know which exception the Attorney General seeks to admit it under.

The Court: You are taking the position it is a recognized treatise?

Ms. Gartland: Yes, Your Honor.

(p. 87) The Court: Overruled. F is received.

(Defendants' Exhibit F received in evidence.)

Q Mrs. Thomas, does the Center devote time and activity to discussing potential abuses of the initiative and referendum process?

A Yes, we have selected information on that, just in the normal course of our work.

Q Would you give us your opinion as to the possible types of abuses that states need to be concerned about, if they wish to preserve this process as it was conceived historically as a popular grassroots efforts?

A Well, I think that the basic concern of those of us who study the process, and I would include in that the Center, as well as academics like Dr. Mackelby, is that the initiative process as it was initially envisioned, or as it was presented in the literature at the turn of the century, was that it was an instrument that was available to the common ordinary citizen to have, like a safety valve, within the state legislatures that did not address issues that were of concern to the general population, and it was strictly envisioned as a grassroots tool.

I think that what has happened over time, and as we start tracing the amounts of money that go into these kinds of campaigns, that it—it can no longer be classified as a grassroots process, if in fact it takes millions of dollars to get an issue like this to the public, and this is what we have (p. 88) seen.

You see it in paid petition drives. You see it in the amount of money that's poured into television and radio

campaigns, and so that our concern is that the initiative process has been perverted from its original intent, in fact become something available only to those groups that have the financial resources to set the political agenda through ballot qualifications.

Q Do you have an opinion as to whether paying circulators, as opposed to using volunteer circulators, is likely to add to the potential abuse of the process?

A Well, I think that in cases where—where you see that paid circulators have been used only for a portion of the signature drive, you know, as a supplement to volunteers, that probably the problems are minimal, but if you see it as a way of life, for ballot qualifications, if it becomes easier to qualify for the ballot through paid signature collectors than through a motivated grassroots effort, I think that does in fact signal a corruption of the process.

Ms. Gartland: Thank you. I have no further questions.

#### CROSS-EXAMINATION

By Mr. Danks:

Q Ma'am, I note from your resume that you received your degree in political science in May of 1981, is that right?

A That's correct.

(p. 89) Q And then you have worked for National Center for Initiative Review since you obtained your degree, is that right?

A That's correct. Well, actually, I finished course work in December, 1980, went to work for the Center in

February of '81, and the degree was conferred in May of '81.

Q So the National Center for Initiative Review was organized, am I correct, out of a concern that there may be too many initiatives being placed on the ballot in different parts of the United States?

A No, I don't believe out of a concern that there were too many, but out of the concern that people didn't understand how measures qualified for the ballot, from one state to another, how it differed.

Q Was there a concern that perhaps measures were being placed on the ballot and people were voting in pieces of legislation that were not prudent, at least in the institute's—light—

A Mind? Well, I think the concern was that looking at some of the initiative activity that had happened in states, particularly like California, that where initiative proposals did not fare well under judicial review, and many were in part or in whole declared unconstitutional, that there was then a national curiosity as to how did these get on the ballot, if they are going to be declared unconstitutional, and so that sort of generated the whole project of trying to study the history of the use of the process, for one state to another, to see if they had experiences similar to (p. 90) California.

Q The initiative is a form of direct democracy?

A That's correct.

Q People vote directly on a piece of legislation?

A Well, there are some exceptions to that. In the indirect initiative states, sometimes the initiative proposal



can be declared moot if adopted by the legislature before it goes to the ballot.

Q Is it your view that too many initiatives, or too much democracy in that sense, is a bad thing?

A Is it my view?

Q Yes.

A No, but I do think that sometimes there are issues that come up on the initiative process where you vote a simple yes or no that are highly complex, and that might be a little bit beyond the background of the voter to make a wise decision. This has been supported by polling done by Merfeld in California and by the Eagleton poll in New Jersey, and by newspaper polls in Boston and Florida, that show that oftentimes people feel that issues that make it to the ballot are far too complex, and their legislators would be better qualified to make a decision.

The Court: Excuse me, Mr. Danks. Thank you, go ahead.

Q Are you saying that there are certain matters that are just essentially too complicated for the voter to understand and vote on, and therefore they shouldn't be allowed to vote, and those (p. 91) matters should go to the legislature?

A No, we have never said that people shouldn't be allowed to vote on anything. In fact, we don't take a stand on the issue at all. I'm just telling you there has been studies done to examine how people feel about the initiative process, and those tend to support the general belief that even though people in large numbers, about 75 per-

cent of the people, when you ask them, "Do you think the initiative process is a valuable tool," they will say yes. When you say, "Do you think that legislators are better equipped to make decisions on complex issues," they will say in about 75 percent of the time yes.

So the question has become how—is the initiative process used best to handle complex problems. Those are things that no one knows. There has not been enough empirical data available to judge the complexity of the issue, and where the break point seems to be.

Q But you are saying that there are certain issues that are just too complex for the voters to vote on?

A I'm telling you that that is what the voters have said in polling that has been done before. The voters have said that there are some issues that are too complex for them to vote on.

Q Is that your personal opinion as well?

A When I look at some—

Q If it is possible to answer that yes or no, I would appreciate it. Is it your personal opinion that there are certain issues (p. 92) that are just too complex for the voters to vote on?

A My own opinion?

Q Yes.

A Yes.

Q And, as a matter of fact, of your own personal opinion, do you feel that the initiative process ought to be curtailed or restricted or perhaps even eliminated here in the State of Colorado?

A Are you going to give me a choice, or do I have to answer yes or no to restricted, curtailed or eliminated?

Q Let me ask it this way. Have you read the constitutional provisions in the State of Colorado on initiatives?

A Yes, I have.

Q Do feel that grants the people too great a right to put matters on the ballot?

A I think there are provisions that are considerably more lenient than other states.

Q So, is the answer to that yes, you believe our constitutional provision is too liberal, so to speak?

A Yes.

Ms. Gartland: I object. I think counsel is leading the witness as to what's in the Constitution and whether—I'm not clear on whether you are referring to all provisions in the statute, in the election code, that relate to the initiative process, or just to the constitutional grant itself.

(p. 93) The Court: Well, I think the witness is entitled to interpret the question in such a way that she can answer it, and she has obviously done so and answered it. You can bring that out on redirect, if you like.

Q Does your feelings on this initiative, the value of the initiative, color your testimony regarding whether or not you feel that paid petition circulators are more likely to forge or misrepresent—make misrepresentations in the collection of signatures?

A Did my personal opinion?

Q Yes.

A Become reflected in that?

Q Yes.

A No, I think that—what I have stated today is based on what I have learned in my professional experience, and I try not to let my personal opinions color that.

Q It does make it more difficult to get, or it could make it more difficult to get a petition on the ballot by prohibiting paid petition circulators, isn't that true?

A I don't think that the history of the Colorado initiative supports that viewpoint.

Q What is your opinion? Does it make it more difficult?

A I don't believe so.

Ms. Gartland: Your Honor —

The Court: Well, the question is answered.

(p. 94) Q All right, philosophically, the National Center for Initiative Review is oriented towards discouraging initiatives, is that correct?

A That's incorrect.

Q Now, your counsel has provided me a copy of a document called "Editorial Research Reports, Initiatives and Referendums," October 22, 1982. Have you seen that publication?

A Yes, I have.

Q And on Page 787, it states as follows, "Critics always say that ballot measure campaigns tend to be over-

simplified and heavy on the use of slogans that may be misleading. Quote, it's what someone referred to as a bumper sticker language, said Sue Thomas of the National Center for Initiative Review in Englewood, Colorado."

Now, assuming that I have accurately quoted that, is it correct that at least this publication perceives your institute and apparently perceives you as a critic of initiatives?

A We are a critic of lenient—we are a critic of campaigns that are fought that do not totally reflect the content of the initiative proposal, and there are aspects of the initiative process where we see there could be improvements made that would strengthen the process.

Q Now, you mentioned in your direct testimony that there are certain organizations or companies coming into existence which are more or less in the business of gathering petition signatures, (p. 95) isn't that right?

A That's correct.

Q Now; does your experience also include campaigns for political office by individuals?

A We are not involved in political campaigns, in candidate races, at all.

Q Are you aware of any campaign consulting firms that have worked for different candidates in different election years on a paid basis?

A Yes.

Q Now, as a matter of your own personal opinion, do you feel that those paid consultants in, say, the presidential campaign, ought to be disallowed?

A I don't see any correlation between candidate campaigns and issue campaigns. I—on the paid circulator portion of the issue campaigns, we are talking about an issue before it really is an issue.

Q Do you—

A Is that not correct?

Q Do you have any objection to the payment of an advertisement in a newspaper, for example, the Rocky Mountain News, and say the advertisement would say, "Please sign the petition to deregulate motor carriers"? Do you feel that is somehow a bad influence?

A No, absolutely not. I think that's a fantastic idea.

(p. 96) Q But you do believe that it is wrong to pay the petition circulator to go out and in effect say the same thing, is that right?

A Since we do have a requirement in the State of Colorado that the circulator face the signer face to face, then I do not see that it is the same thing at all. I mean the petitioner signer has to actually stand and watch someone sign the petition. I think that—I think that that's where I diverge from—I don't think it's a good idea to pay them to do that, but I think that putting ads in the paper, the carrying of banners, fly airplanes overhead, I don't see that as anything nearly the same as what you are talking about, paying someone to collect signatures.

Q Do you think there is anything ethically or morally wrong with paying someone for their work?

A No, I don't. I don't believe that there is anything wrong with that. Unless they are operating as a volun-